IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8871 & 8872 of 1999
with
SPECIAL CIVIL APPLICATION NO. 1093 & 1668 OF 2000
with
SPECIAL CIVIL APPLICATION NO.2853, 2865 & 5853 ALL OF 2000.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUGALKISHOR J PATEL

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioners in all these petitions.

Ms. Shraddha Trivedi, AGP for Respondent State in all these petitions. .

Ms. Sejal Mandavia for Respondent No.2 in SCA No.1668/2000 and 5853/2000.

MR HS MUNSHAW for Respondent No. 2 in SCA No. 1093/2000; 8871/99; 2865/2000 and 2853/2000.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/12/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Supehia for the petitioners in this group of petitions. Heard learned advocate Ms. Sejal K. Mandavia for respondent No. 2 in Special Civil Application No. 5853 of 2000 and 1668 of 2000. Heard learned advocate Mr. Munshaw for respondent No.2 in special civil application nos. 1093 of 2000, 8871 of 1999; 8872 of 1999; 2865 of 2000 and 2853 of 2000 and Ms. Shraddha Trivedi, learned AGP for the respondent State in this group of petitions. Notice of rule issued by this Court in special civil application no. 2865 of 2000 and 2853 of 2000 has been served upon the respondent panchayat but no appearance has been filed on behalf of respondent panchayat in said two petitions and, therefore, at the suggestion of this Court, learned advocate Mr.H.S. Munshaw has appeared in the said two petitions who is normally appearing on behalf of the said panchayat. In this group of petitions, rule has already been issued by this Court. At the request of the learned advocates for the respective parties, all these matters have been taken up for final hearing today.

The only grievance voiced by the petitioners in this group of petitions through their learned advocate is that though the petitioners are entitled to the benefit of the Government resolution dated 5th July, 1991, copy of which is annexed at annexure "A" to the petition, the respondent authorities have not revised their pay as per the said resolution and have not refixed their pension on that basis. Under the resolution dated 5th July, 1991, at the end of 9, 18 and 27 years of service, higher pay scales were contemplated. This resolution was later on superceded by the resolution dated 16th August, 1994 by which number of years have been changed from 9, 18 and 27 to 9, 20 and 31 years. According to the petitioners, According to the petitioners, in the later resolution dated 16th August, 1994 at annexure "B", it was made clear that those who have retired between 1st June, 1987 to 31st July, 1994 would be governed by the earlier resolution dated 5th July, 1991. The petitioners have already retired from service since long and if they were entitled to the benefits of the Government resolution dated 5th July, 1991 for higher pay scale at the end of 9, 18 and 27 years, it was incumbent upon the respondents to take an early decision for the purpose of revising their pensionary benefits and pay the amounts due to them. Under these circumstances, it is directed that the

concerned authorities of the respondents will immediately consider the case of the petitioner in light of the resolution dated 5th July, 1991 and take decision for fixation of their higher pay scale at the end of 9, 18 and 27 years as may be admissible to them and give revised pensionary benefits worked out by the concerned authorities on that basis. This should be done expeditiously. Therefore, it is directed that the concerned authorities shall consider the matter and take decision regarding fixation of higher pay scale of the petitioners at the end of 9, 18 and 27 years as may be admissible under the resolution dated 5th July, 1991 within eight weeks. The authorities were, in fact, expected to decide these questions before December, 1993 as per the Government communication dated 8th September, 1993. On fixation of pay as may be admissible under the resolution dated 5th July, 1991, whatsoever amount may be found due and payable to the petitioners should be paid to them within two weeks after taking that decision. The amount that may be found admissible from earlier dates would have been paid to the petitioners, if decisions were taken within a reasonable time. The admissible amounts having remained with the respondents, it would be appropriate to direct the concerned authorities of the respondents to pay the amounts that may be due to the petitioners on application of the resolution dated 5.7.1991 with interest at the rate of 12 per cent per annum from the date on which they may be held to be due and payable to the petitioners by the concerned authorities. In view of the above directions issued by this Court, recovery orders passed by the respondent authorities against the petitioners are also required to be quashed and set aside. Accordingly, orders of recovery passed against the petitioners are hereby quashed and set aside.

Rule is made absolute accordingly in each of the petitions with no order as to costs.

This Court has passed these orders while considering two decisions of this Court, one in special civil application no. 10204 of 1998 dated 25.8.1999 (Coram : Rajesh Balia,J.) and the second one in special civil application no. 6589 of 1995 dated 11th April, 1996 (Coram : R.K. Abichandani,J.). It is necessary to to note that the order passed by this Court (Coram : R.K. Abichandani,J.) in special civil application no. 6589 of 1995 on 11th April, 1996 was challenged by the respondent authority before the Division Bench of this Court by filing letters patent appeal no. 586 of 1996 and the said letters patent appeal has been dismissed by the division

bench of this Court by order dated 30th September, 1999.

In the result, rule is accordingly made absolute in each of the petitions with no order as to costs.

Dt.19.12.2001. (H.K. Rathod,J.)
Vyas